

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Shuster	Team: Squad #15	CCRB Case #: 201605621	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 06/23/2016 1:15 PM	Location of Incident: East 137th Street and Willis Avenue; inside of § 87(2)(b)	Precinct: 40	18 Mo. SOL 12/23/2017	EO SOL 12/23/2017	
Date/Time CV Reported Thu, 06/23/2016 4:40 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/29/2016 11:03 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Crain	03856	933719	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Alberto Gonzalez	01636	941828	040 PCT
2. POM Moises Garcia	05782	950471	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christopher Crain	Abuse: At East 137th Street and Willis Avenue in the Bronx, Police Officer Christopher Crain stopped § 87(2)(b)	§ 87(2)(b)
B.POM Christopher Crain	Force: Inside of § 87(2)(b) in the Bronx, Police Officer Christopher Crain used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

On June 23 2016, Deputy Inspector Brian Hennessey of the 40th Precinct called IAB to file this complaint on behalf of § 87(2)(b) generating original log number 16-22408. It was received at the CCRB on June 29, 2016.

On June 23, 2016, at 1:15pm, § 87(2)(b) was with two unidentified acquaintances when they were approached on East 137th Street and Willis Avenue in the Bronx by Sgt. Alberto Gonzalez, PO Christopher Crain, and PO Moises Garcia, of the 40th Precinct. PO Crain approached § 87(2)(b) and § 87(2)(b) ran from the officers and into § 87(2)(b) in the Bronx, a residential building in which his grandmother resided (**Allegation A**). PO Crain pursued § 87(2)(b) on foot and once he reached the 6th floor hallway, punched § 87(2)(b) one time in the face (**Allegation B**). § 87(2)(b) who was fourteen years old at the time of the incident, was taken to § 87(2)(b) where he received 8 stitches to the left side of his upper and low lip.

§ 87(2)(b) was charged with § 87(2)(b), § 87(2)(a) 160.50 and released from the 40th Precinct stationhouse on a Desk Appearance Ticket.

Video footage was obtained from § 87(2)(b) which is a NYCHA § 87(2)(b) building. Cameras are installed only outside and in the lobby of the building, and as such did not capture the incident. Cell phone video footage was also obtained from § 87(2)(b), a resident of § 87(2)(b) who did not witness the incident but who took the video as the Emergency Medical Technicians were escorting § 87(2)(b) from the building to the ambulance. The allegations were not captured, though § 87(2)(b)'s lip injury is visible (BR 3).

Mediation, Civil and Criminal Histories

- Due to § 87(2)(b)'s substantial physical injury, this case was not eligible for mediation.
- A FOIL request was filed with the Office of the New York City Comptroller on September 7, 2016, to verify whether any notices of claim were filed in regard to this incident. The results will be added to the case file upon receipt.
- § 87(2)(b), § 87(2)(a) 160.50, § 87(2)(c)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (BR 2).
- During PO Crain's 12-year tenure with the NYPD, he has been the subject of sixteen previous CCRB allegations involving seven cases and resulting in no substantiated allegations. § 87(2)(g)

Potential Issues

Although both § 87(2)(b) and PO Crain testified that no one else was present for the incident, contact attempts were made to all of the § 87(2)(b) residents of § 87(2)(b) and Field

Work was conducted to canvass for witnesses on that floor of the building on July 28, 2016. Although many of the neighbors were aware of the incident because there was a great deal of blood on the ground near the elevators (see photographs of blood residue in BR 16-17), none of those contacted were home at the time of the incident and they neither saw nor heard the encounter between PO Crain and § 87(2)(b).

Findings and Recommendations

Allegation A – Abuse of Authority – At East 137th Street and Willis Avenue in the Bronx, Police Officer Christopher Crain stopped § 87(2)(b)

It is undisputed that PO Crain stopped § 87(2)(b) who immediately took off running toward § 87(2)(b). PO Crain chased him on foot, trailed by Sgt. Gonzalez on foot and by PO Garcia in the police vehicle. The propriety of PO Crain's stop remains in dispute.

§ 87(2)(b) reported that he was walking to the nearby basketball court with two unidentified casual acquaintances when he saw an unmarked police car approaching them. PO Crain, who was seated in the front passenger seat, said, "Come here, come here" to § 87(2)(b) directly and began exiting the police vehicle. § 87(2)(b) began walking quickly away from PO Crain, then broke into a run and headed toward § 87(2)(b) a NYCHA building in which his grandmother resides. He testified that he ran from the officers because he was afraid and not because he was hiding anything. He denied smoking marijuana or having any contraband on his person (BR 13).

PO Crain testified that, from inside his vehicle a few car lengths away, he observed § 87(2)(b) and two other young men smoking a marijuana cigarette, prompting the officers' approach. PO Crain identified it as marijuana by the odor and by the brown paper in which it was wrapped; the windows of the police vehicle were down at such time. PO Crain observed § 87(2)(b) holding the cigarette and passing it to one of the other two men. The officers then made a U-turn and headed back toward the group, by which time the marijuana cigarette was no longer in view. PO Crain acknowledged being the first officer to exit from the police vehicle and to initiate conversation with them, and he testified that § 87(2)(b) began running immediately after PO Crain stepped out of the vehicle and identified himself as the police (BR 14).

Sgt. Gonzalez testified that he observed the men smoking what appeared to be a marijuana cigarette, but that he could not recall which of the three men was holding it. After exiting from the vehicle, he surveyed the ground for about fifteen seconds, looking for the discarded marijuana cigarette, but did not find it. The marijuana cigarette was never recovered and, due to the officers pursuing § 87(2)(b) no further investigation was conducted into the marijuana and/or the other two men's involvement (BR 15).

§ 87(2)(b) denied smoking marijuana, no marijuana was recovered from the scene, and § 87(2)(b) was not charged with possession of the marijuana or with tampering with physical evidence. § 87(2)(b) did not know the names of the two other men, and as they were not summonsed nor was information ever obtained from them, they could not be identified. Although PO Crain testified to specifically seeing § 87(2)(b) holding the marijuana cigarette, Sgt. Gonzalez did not report observing him do so. § 87(2)(g)

§ 87(2)(g)

Allegation B – Force – Inside of § 87(2)(b) in the Bronx, Police Officer Christopher Crain used physical force against § 87(2)(b)

§ 87(2)(g)

It is undisputed that PO Crain punched § 87(2)(b) one time in the left side of his face, using a closed fist. No one else was present for the incident. What remains in dispute is whether this punch was justified under the circumstances.

As discussed, § 87(2)(b) ran from PO Crain when the officers stopped him. § 87(2)(b) testified that he ran into § 87(2)(b) to go to his grandmother's apartment, which is on the § 87(2)(b) of that building. He got tired on the 6th floor and paused, which was where PO Crain caught up to him about ten seconds later. § 87(2)(b) was standing by the elevators, catching his breath, when PO Crain immediately grabbed him by the right wrist and punched him in the left lip area before handcuffing him in a standing position. PO Crain then took § 87(2)(b) to the ground and punched him a second time with a closed fist, the punch again landing on § 87(2)(b)'s left lip. § 87(2)(b) denied attempting to walk away from PO Crain, denied making any movements, and denied being in possession of a knife.

PO Crain testified that when he entered the 6th floor hallway, he observed § 87(2)(b) hunched over and catching his breath, both hands inside of his pants pockets. PO Crain instructed § 87(2)(b) to remove his hands from his pockets, and § 87(2)(b) promptly did so. PO Crain observed at this time that § 87(2)(b) was holding a closed knife in his right hand, which PO Crain believed (based upon his training and experience making an unspecified number of such arrests) to be a gravity knife. Both of § 87(2)(b)'s arms remained loose at his sides and § 87(2)(b) did not raise the arm holding the knife in any way.

PO Crain and § 87(2)(b) were standing about five feet apart from one another when PO Crain first saw the closed knife. Upon seeing the knife, PO Crain immediately stepped toward § 87(2)(b) and punched him one time in the face with a closed fist. § 87(2)(b) fell to the ground from the force of the punch, and the knife fell from his hand and onto the ground. PO Crain handcuffed him on the ground, retrieved the knife, and called for an ambulance for § 87(2)(b). PO Crain denied punching § 87(2)(b) once on the ground, and testified that he punched him only the one time.



201605621_20160908_1136_DM.mp4

This cell phone footage captures § 87(2)(b) leaving the location with medical personnel, and also captures the injury to his face (BR 3). § 87(2)(b) provided the CCRB with photographs

of his injury, which his mother § 87(2)(b) took on June 23, 2016, and June 24, 2016 (BR 4 – 7).

§ 87(2)(b) s medical records from § 87(2)(b) note that § 87(2)(b) received eight stitches to suture a 2-cm laceration to his left upper lip on June 23, 2016. Due to the injury, § 87(2)(b) was unable to speak and his mother, § 87(2)(b) reported to medical personnel on his behalf that an officer had punched § 87(2)(b) in the face. § 87(2)(b) returned to the hospital later that night because the sutures had come undone, and he received five additional stitches at that time (see medical records).

Officers are to use the minimum force reasonably necessary to effect an arrest. NYPD Patrol Guide 221-02 (BR 8).

§ 87(2)(b) s arrest report and PO Crain’s memo book (both of which were prepared by PO Crain, who was the arresting officer) consistently reflect that PO Crain saw the knife in § 87(2)(b) s hand prior to punching him. The Threat Resistance Incident Report, generated by Sgt. Gonzalez, reflects this same information (BR 12). However, DI Hennessey’s phone call notification to IAB (BR 10) as well as the Investigating Supervisor’s Assessment Report he prepared, both note that the knife was recovered from § 87(2)(b) s person upon search as incident to a lawful arrest (BR 11). PO Crain testified that he did not speak with DI Hennessey directly and that Sgt. Gonzalez liaised between them; Sgt. Gonzalez acknowledged being the one to brief DI Hennessey about the incident, but denied ever hearing from PO Crain that the knife was found after arrest, as opposed to before. § 87(2)(g)

§ 87(2)(b) A knife was vouchered at the 40th Precinct as evidence associated with § 87(2)(b) s arrest, § 87(2)(g) the Office of the Bronx District Attorney declined to prosecute § 87(2)(b) on his § 87(2)(b), § 87(2)(a) 160.50 charge (BR 9, BR 1).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Squad: 15

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date